THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.22667 of 2002

Date: 18.07.2007

Between:

Chakka Nagaraju

... Petitioner

AND

The District Collector,
Guntur, Guntur Distirct and others.

... Respondents

Counsel for the petitioner : Sri P. Venkateswarlu

Counsel for respondents 1to3: Government Pleader for
Civil Supplies

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No. 22667 of 2002

ORDER:-

This writ petition is filed for a writ of Mandamus to declare order dated 26.06.2002 in E.C.Case No.27/2002-S7 passed by respondent No.2, which was confirmed by respondent No.1 through his proceedings dated 19.10.2002, as illegal and arbitrary.

In pursuance of notification dated 02.02.2002 issued by respondent No.3, the petitioner applied for fair price shop dealership of Khajipet Village, which was reserved for General Category. The petitioner was one among the five persons, who applied for the dealership. Respondent No.3 through his proceedings dated 27.02.2002 selected and appointed the petitioner. Feeling aggrieved by the said order, respondent No.4 filed an appeal before respondent No.2, who vide his proceedings dated 26.06.2002 set aside the order of appointment of the petitioner on the ground that his grandfather was the previous dealer on whose death the vacancy arose and that fair price shop dealership is not hereditary. The said order having been confirmed by respondent No.1 vide his proceedings dated 19.10.2002, the present writ petition is filed questioning the said two proceedings.

Heard Sri P. Venkateswarlu, learned counsel for the petitioner, Smt. K. Hemalatha, learned Assistant Government Pleader for Civil Supplies for respondent Nos.1 to 3 and counsel representing Sri Srinivasa Rao Bodduluri for respondent No.4.

Learned counsel for the petitioner submitted that respondent

Nos.1 and 2 have committed a grievous error in invalidating the order of appointment of the petitioner on the premise that the only ground on which the petitioner's appointment was made by respondent No.3 was that he happened to be the grandson of the fair price shop dealer on whose death the shop was notified and the vacancy was filled up. He also submitted that respondent No.3, after considering the comparative merit of the six candidates, selected the petitioner and appointed him. He submitted that the fact that the petitioner's grandfather was the previous dealer was also mentioned in the order and that by itself could not be made a basis to set aside his order of appointment.

Learned Assistant Government Pleader sought to support the two impugned orders by contending that it is a fact that the petitioner's grandfather was a fair price shop dealer on whose death the vacancy arose and that since this Court by its order dated 28.10.1997 passed in W.P.No.4044 of 1997, while following the earlier order of this Court, held that the policy decision taken by the Government of Andhra Pradesh to the effect that the legal representatives of the deceased authorized fair price shop dealers are not automatically entitled to succeed and get the authorization is legal and valid, the petitioner ought not to have been appointed as the fair price shop dealer and that respondent No.2 had rightly set aside the said order which received confirmation by respondent No.1.

Learned counsel for respondent No.4 supported the contentions of the learned Assistant Government Pleader and sought dismissal of the writ petition.

A perusal of the order of respondent No.3 shows that all the six applicants, including the petitioner, appeared for written test on 18.02.2002 and also interview conducted on 19.02.2002.

Respondent No.3 had in his order of appointment mentioned that out of the six candidates, the performance of the petitioner in the interview is up to the mark. Besides stating this reason, respondent No.3 also mentioned that petitioner's grandfather was the previous dealer, on whose death the present vacancy arose.

Respondent No.2 in his order, by which the appointment order issued by respondent No.3 was set aside, construed the said order of the 3rd respondent as being based on the sole fact that the petitioner was the grandson of the previous dealer and that in view of the policy decision of the Government not to automatically appoint the legal representatives of the deceased as permanent dealers which was upheld by this Court, the appointment cannot be sustained. Respondent No.2 also construed the order of the 3rd respondent in a similar fashion in holding that the petitioner was appointed as a successor to his deceased grandfather and that therefore the same is contrary to the policy decision.

It is trite to say that the appointing authority has the discretion to select a candidate in accordance with the perceived merit. Respondent No.3, after holding written test and interview, was satisfied that the performance of the petitioner was up to the mark. It is therefore evident that of the six candidates, who were considered for appointment in the view of respondent No.3, petitioner appears to be a better candidate. In addition to this reason, respondent No.3 also mentioned that the petitioner happens to be the grandson of the deceased permanent dealer. It is not as if respondent Nos.1 and 2 after perusing the record were satisfied that the other candidates possess superior qualifications or superior merit and that therefore the appointment of the petitioner was not sustainable. Mentioning of the fact that the

petitioner is the grandson of the permanent dealer in the order of respondent No.3 was taken by respondent Nos.1 and 2 as the sole reason for the petitioner's appointment. In my considered view, respondent Nos.1 and 2 have completely failed to understand and construe the order of respondent No.3 from a right perspective.

Learned counsel for respondent No.4 failed to show that the order of respondent No.3 appointing the petitioner was vitiated by extraneous considerations. In any event, respondent No.4 does not derive any benefit out of the orders passed by respondent Nos.1 and 2 because while setting aside the appointment of the petitioner there is no direction given to appoint respondent No.4.

A perusal of the record shows that this Court, while admitting the writ petition, granted interim suspension on 11.12.2002 and by virtue of the said order the petitioner is being continued as fair price shop dealer.

Learned Assistant Government Pleader, after receiving instructions from Senior Assistant (Ele.), O/o Tahsildar, Tenali, submitted that the petitioner's performance is unblemished.

Having regard to the aforementioned facts, the writ petition is allowed and the orders of respondent No.2, as confirmed by respondent No.1, are set aside. No costs.

As a sequel to disposal of the writ petition, WPMP.No.28444 of 2002 filed by the petitioner for interim relief is disposed of as infructuous.

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C.V.NAGARJUNA REDDY, J

Date: 18.07.2007
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